

1 | the various -- there's a variety of different things in this  
2 | exhibit and I wanted to ask what the relevance --

3 | JUDGE CHACHKIN: Well, that's what I was going --

4 | MS. FOELAK: -- was.

5 | JUDGE CHACHKIN: -- to ask counsel, how is this  
6 | relevant to -- what's the basis of your offer?

7 | MR. HARDMAN: Your Honor, the -- as will be devel-  
8 | oped in the, the testimony of Mr. Raymond later on, one --  
9 | part of the context of what was going on at this time had to  
10 | do with the, the limitation on -- or a limitation on the time  
11 | that any licensee can transmit at any one period before relin-  
12 | quishing the air -- or relinquishing the channel, so-called  
13 | Three-Minute Rule. And in one of the exhibits marked for  
14 | identification earlier, we had an exchange of correspondence  
15 | between Mr. Shiben and myself arising out of a meeting held on  
16 | April 2nd in which that issue was raised. And Capitol was  
17 | advised by Mr. Shiben that the Three-Minute Rule did not apply  
18 | to RAM's facilities because they, they were not interconnect-  
19 | ed. And this is to show that the -- according to the  
20 | Commission's own records the facilities were interconnected  
21 | both, you know, before and after the time of the letter and  
22 | leading to the general state of confusion about this, exactly  
23 | what policies apply to the operation of these facilities.

24 | MS. FOELAK: Your Honor --

25 | JUDGE CHACHKIN: Ms. Foelak?

1 MS. FOELAK: There are no issues in this proceeding  
2 concerning RAM. Whether or not RAM was authorized to be  
3 interconnected is in no way relevant to this proceeding and,  
4 of course, the fact that it was authorized for an FB6 does not  
5 mean that any particular transmissions were what were consid-  
6 ered interconnected. But, at any rate, RAM is not at issue in  
7 the proceeding or any -- nor is the Three-Minute Rule that is  
8 referred to at issue, whether against -- is not at issue  
9 against Capitol either.

10 MR. HARDMAN: Your Honor, the reasonableness of what  
11 Capitol did or didn't do is at issue, and the, the general  
12 climate of confusion is very definitely relevant to assess  
13 whether what it did was reasonable under the circumstances.

14 JUDGE CHACHKIN: Well, how does the Three-Minute  
15 Rule have anything to do with the reasonableness of RAM --

16 MR. HARDMAN: One of the --

17 JUDGE CHACHKIN: -- Capitol's actions?

18 MR. HARDMAN: One of the problems that Capitol had  
19 was that, that RAM would transmit on the air for, you know,  
20 many, many minutes at a time without relinquishing it, and  
21 Capitol believed that was in violation of the rules as they  
22 understood them. That was part of the basis for Capitol  
23 complaining to Mr. Walker. And it also affected, you know,  
24 how they dealt with the situation at the time.

25 MS. FOELAK: Your Honor, I can't see how the length

1 of Capitol's transmissions could in any way mitigate any  
2 violations such as interference or other violations that they  
3 may have committed.

4 MR. HARDMAN: I don't believe I --

5 MR. JOYCE: That -- if I may interject, I mean, that  
6 -- it still doesn't explain the relevancy of this exhibit.  
7 If, if Mr. Hardman wants to testify about what the FCC's rules  
8 are, I'd be happy to examine him. I think his interpretation  
9 of the rule is mistaken. I've told him that and there's  
10 letters in the files to that effect. But if he wants to  
11 testify about the Three-Minute Rule, I'd be happy to examine  
12 him. But if witness wants to testify about the Three-Minute  
13 Rule, we're happy to examine him. I have no objection to this  
14 document because I think it's irrelevant to the proceedings,  
15 but it is irrelevant.

16 MR. HARDMAN: We don't need my testimony. We have a  
17 Direction and a Ruling by Mr. Shibben, an official ruling on  
18 behalf of the FCC on that issue. So, Mr. Joyce's view of the  
19 Three-Minute Rule and my view is, is, is irrelevant. It's  
20 what Capitol was told by an official of the Federal  
21 Communications Commission about the applicability and why the  
22 Three-Minute Rule didn't apply. And very definitely not --  
23 has nothing to do with Capitol's transmission, and I, I never  
24 said it was. But it -- what it goes to is their view of what  
25 was happening when RAM would stay on the air continuously for

1 many, many minutes at a time, far beyond the three minutes  
2 that Capitol believed they were authorized -- or required to  
3 shut down.

4 JUDGE CHACHKIN: I thought, I thought you indicated  
5 to me that one of your defenses was that there was -- existed  
6 a Three-Minute Rule and you felt, you felt as mitigation that  
7 Capitol was operating in accordance with the Three-Minute  
8 Rule, contrary to Mr. Shiben, who you believe was incorrect in  
9 his interpretation, and that all based on the fact that there  
10 was facilities -- RAM's facilities were interconnected, con-  
11 trary to what Mr. Shiben says. Is that what you're saying?

12 MR. HARDMAN: I don't believe so, Your Honor. The  
13 issue of --

14 JUDGE CHACHKIN: What is your point?

15 MR. HARDMAN: -- Capitol exceeding the Three-Minute  
16 Rule never came up because it didn't have lengthy transmis-  
17 sions. The is--

18 JUDGE CHACHKIN: No, RAM was exceeding the Three-  
19 Minute Rule --

20 MR. HARDMAN: That's right.

21 JUDGE CHACHKIN: -- that I understood.

22 MR. HARDMAN: Right.

23 JUDGE CHACHKIN: And that's one of your arguments,  
24 is going to be what you did was necessary because of RAM's  
25 exceeding the Three-Minute Rule.

1 MR. HARDMAN: No, Your Honor.

2 JUDGE CHACHKIN: Am I wrong? All right.

3 MR. HARDMAN: No. We -- we're not, we're not saying  
4 that we have any right to --

5 JUDGE CHACHKIN: What are you saying, then? I, I  
6 don't understand your point.

7 MR. HARDMAN: What we're saying is that the --

8 JUDGE CHACHKIN: Assuming that Mr. Shiben was wrong  
9 about the Three-Minute Rule, and I assume you're saying that,  
10 the Three-Minute Rule did apply here --

11 MR. HARDMAN: I'm saying that Mr. Shiben's instruc-  
12 tion, the Ruling, was inconsistent with the, the Commission's  
13 own data --

14 JUDGE CHACHKIN: Well, what does --

15 MR. HARDMAN: -- and the license.

16 JUDGE CHACHKIN: -- what does, what does his ruling  
17 have to do with the issues in hearing?

18 MR. HARDMAN: The issue in hearing is that Capitol  
19 is -- the reasonableness of Capitol's -- the steps Capitol  
20 took to avoid interference is, is, is part of the rule viola-  
21 tion for which it's being cited. Now, Capitol did not agree  
22 to a wire-line control tying the terminals together. It did  
23 not agree to change frequencies. And the, the whole context  
24 of what it did and why it did it at the time in response to  
25 various things said and done by RAM and other parties goes to

1 whether what it did was reasonable under the circumstances.

2 JUDGE CHACHKIN: And how does this exhibit deal with  
3 that subject of --

4 MR. HARDMAN: This --

5 JUDGE CHACHKIN: -- reasonableness?

6 MR. HARDMAN: -- exacerbates the confusion as to  
7 exactly what the parties were supposed to be doing, because on  
8 the one hand you have Nabor (phonetic sp.) telling Capitol is  
9 -- there's a Three-Minute Rule that applies to this, on the  
10 other hand you've got RAM that's transmitting beyond three  
11 minutes on a facility that's obviously interconnected, and  
12 then you have Mr. Shiben issuing a Ruling that says they don't  
13 have to comply with the Three-Minute Rule because their facil-  
14 ities aren't interconnected.

15 JUDGE CHACHKIN: I understand that. But how does  
16 this go to the reasonableness of Capitol's actions?

17 MR. HARDMAN: If, if Capitol is, is confused and  
18 there is no clear direction as to what it's supposed to do,  
19 the -- it can hardly be faulted for, for doing something that  
20 the, the Commission didn't consider, you know, obvious.

21 MR. JOYCE: But there's --

22 MR. HARDMAN: So --

23 MR. JOYCE: -- no, there's no foundation, Your  
24 Honor, for the proposition that this exhibit, an FCC license  
25 database, caused confusion to Capitol. I, I still fail to see

1 the connection. It -- now, I would -- my policy, for what  
2 it's worth, in these hearings is always to include stuff  
3 unless it's prejudicial to someone. So, I have no objection  
4 to it, but I fail to see the relevancy of it. And if the FCC  
5 has an objection on relevancy grounds, which seems proper to  
6 me, I still don't see how this is relevant --

7 JUDGE CHACHKIN: Well, do you have anything further,  
8 Ms. Foelak?

9 MS. FOELAK: Yes. Mr. Hardman apparently took  
10 exception in his own mind to Mr. Shiben's letter, but he  
11 didn't indicate that he filed any sort of appeal or sought  
12 another clarification. And for what it's worth, it's not  
13 relevant here. Mr. Shiben's letter speaks for itself and says  
14 that the Three-Minute Rule does not apply to paging companies  
15 such as RAM and Capitol.

16 JUDGE CHACHKIN: Well, I'm inclined to receive  
17 Capitol Exhibit 20 and we'll see where we go from here, wheth-  
18 er it's connected with other exhibits. But we have a serious  
19 case here involving the possible revocation of a number of  
20 licenses, so I'm prepared to extend an opportunity, at least,  
21 to Mr. Hardman to attempt to demonstrate, if he can, mitiga-  
22 tion. So, I will receive Capitol Exhibit 20.

23 (Whereupon, the document marked for  
24 identification as Capitol Exhibit  
25 No. 20 was received into evidence.)

1 JUDGE CHACHKIN: I recognize by itself this document  
2 doesn't prove anything, but I presume there'll be other  
3 testimony offered which will somehow make clear the importance  
4 of this document.

5 MR. HARDMAN: I believe so, Your Honor

6 JUDGE CHACHKIN: Is that right, Mr. Hardman?

7 MR. HARDMAN: I believe so, Your Honor.

8 JUDGE CHACHKIN: All right. With that understand-  
9 ing, I'm prepared to receive Capitol Exhibit 20.

10 MR. HARDMAN: Thank you.

11 JUDGE CHACHKIN: Do you have any further questions  
12 of this witness?

13 MR. HARDMAN: I pass the witness.

14 JUDGE CHACHKIN: Oh. Mr. Joyce?

15 MR. JOYCE: Yes.

16 CROSS-EXAMINATION

17 BY MR. JOYCE:

18 Q Mr. Walker, this is an FCC license database, you  
19 testified?

20 A Yes, sir.

21 Q Okay. So, you didn't personally input this  
22 information?

23 A No, sir. The actual printout is somewhat modified.  
24 Information that was extraneous to my purposes --

25 Q Okay.



1           A     -- was deleted.

2           Q     This data is compiled at the Licensing Branch in  
3 Gettysburg? Is that correct, do you know?

4           A     Where it's maintained, I -- I'm getting it off of a  
5 computer, I believe, in Washington.

6           Q     Okay. So, you have no way of knowing whether or not  
7 these symbols, the FB6C, actually correspond with the actual  
8 operating characteristics of these stations or not, do you?

9           A     What's here is their authorized facilities. They  
10 don't necessarily agree with what's in use.

11          Q     Are you familiar with the term interconnection for  
12 paging operations?

13          A     I have run into it before, yes.

14          Q     So, would you say you're not very comfortable with  
15 it then?

16          A     I am not extremely comfortable with it, but my --  
17 what I have been told in the past was that paging was not an  
18 interconnection.

19          Q     Mr. Hardman was talking to you about the complaints  
20 that you received from Dale Capehart. I presume Mr. Capehart  
21 was alleging that Capitol was intentionally causing interfer-  
22 ence to them? Is that correct?

23          A     I -- that's correct. Again, my handwritten notes  
24 there, it says, "in response to, in response to (sic) audio  
25 tape from RAM claiming Capitol transmitting Huntington call

1 sign over them..."

2 Q And then you investigated Capitol's operations?

3 A RAM had provided an audio tape that I reviewed,  
4 listening for something improper, a Huntington call sign,  
5 which appears not to exist. I did not hear anything improper.

6 Q But, then, subsequently you went out and you had  
7 your field investigation. You studied Capitol's operations,  
8 as you, you've testified, correct?

9 A Correct.

10 Q Did you determine then that Capitol was causing  
11 interference to RAM's operations?

12 MR. HARDMAN: I object, Your Honor. This, this --  
13 we're now back to the inspection whereas my --

14 JUDGE CHACHKIN: Sustained. We've already had  
15 testimony on that previously about his inspection. We're  
16 dealing with the material -- there was no questions put on  
17 direct relating to the inspection itself.

18 MR. JOYCE: I'm not asking about the inspection,  
19 Your Honor. I'm, I'm asking about the follow-up to Mr. -- Mr.  
20 Hardman asked on direct about this April 10, 1991, letter and  
21 allegations of interference from RAM Technologies concerning  
22 Capitol. My question refers broadly to the, the area that Ken  
23 Hardman opened up for, for cross-examination, which is  
24 interference.

25 MR. HARDMAN: Your Honor --

1 JUDGE CHACHKIN: But I thought we dealt with that  
2 yesterday, in which he testified about his inspection and he  
3 discovered that both RAM and Capitol were causing harmful  
4 interference? Why are we going back to that again? That's in  
5 the record.

6 MR. JOYCE: Because I never got to ask the, the  
7 final conclusion to that, Your Honor, and that's -- I just  
8 have two questions to Mr. Walker.

9 JUDGE CHACHKIN: Well, if it doesn't relate to, to  
10 the direct examination, I won't permit it.

11 MR. JOYCE: It, it relates to the allegations by  
12 Dale Capehart that Capitol was causing interference to RAM  
13 Technologies, which Mr. Hardman asked of Mr. Walker just a few  
14 minutes ago.

15 MR. HARDMAN: Your Honor, the witness never said  
16 that he inspected -- he conducted the inspection in response  
17 to that, to that letter.

18 JUDGE CHACHKIN: You'll have to establish that  
19 first. If it doesn't relate to this letter, the inspection,  
20 then it, then it's not something which was brought up on  
21 direct.

22 BY MR. JOYCE:

23 Q Your investigation of Capitol's operations, Mr.  
24 Walker, did it have anything to do with this April 10, 1991,  
25 letter from RAM Technologies?

1           A     I'm sure the April 10 letter was a portion of it --  
2 of the cause for the inspection --

3           Q     Okay.

4           A     -- investigation.

5           Q     Did you make a conclusion at that investigation as  
6 to whether or not Capitol had caused interference to RAM  
7 Technologies?

8           MR. HARDMAN: I object, Your Honor. That question  
9 is asked and answered several times yesterday.

10          MR. JOYCE: I've, I've been objected to every time  
11 I've tried to answer the question. We have yet to get an  
12 answer to it.

13          JUDGE CHACHKIN: I thought we, I thought we devel-  
14 oped that, that his -- he, he determined that there was harm-  
15 ful interference caused by both RAM and Capitol. Isn't that  
16 what we came up with --

17          MR. JOYCE: My --

18          JUDGE CHACHKIN: -- yesterday?

19          MR. JOYCE: -- my question, my question to Mr.  
20 Walker was whether or not it was willful.

21          MR. HARDMAN: I object, Your Honor. That's -- that  
22 this witness has not been shown --

23          JUDGE CHACHKIN: That --

24          MR. HARDMAN: -- to be --

25          JUDGE CHACHKIN: The, the question of whether it's

1 willful or not is something to be determined by the triers of  
2 the fact, not by this witness. He can only testify what the  
3 facts are. He can't testify whether --

4 MR. JOYCE: That's correct.

5 JUDGE CHACHKIN: -- it's willful or knowingly. He  
6 could testify to the facts, what he found, what he observed.  
7 Whether it's willful or not is a determination by the Court,  
8 not by him. That calls for a conclusion. He can't testify as  
9 to conclusions, legal conclusions, whether it's willful or  
10 not.

11 MR. JOYCE: I'm --

12 JUDGE CHACHKIN: That's a legal conclusion you're  
13 asking for, whether it was willful.

14 MR. JOYCE: With all due respect, Your Honor, I'm  
15 asking for a factual conclusion from a trained FCC engineer --

16 JUDGE CHACHKIN: But -- and I'm telling you I will  
17 permit you to ask any question you want as to what he found,  
18 what he learned, but I will not permit him to answer the  
19 question of whether in his judgment it was willful or not,  
20 since that judgment is to be based on the evidence in the  
21 record.

22 MR. JOYCE: Will I be permitted to ask Mr. Walker  
23 whether or not the interference, in his opinion as an FCC  
24 engineer, was unintentional?

25 MR. HARDMAN: Your Honor, I'm going to object to

1 that as well because Mr. Walker testified several times yes-  
2 terday he never determined -- was never able to determine the  
3 reason for the, the -- Capitol transmitting on top of RAM. He  
4 never determined the reasons and draw any conclusions to, to  
5 whether it was willful or inadvertent or anything of the sort.

6 MR. JOYCE: I, I just don't understand, Your Honor,  
7 how I'm to determine what happened in this case factually if I  
8 can't ask the person who, who is hired and trained by the FCC  
9 to make these investigations as to the difference between  
10 unintentional and intentional interference and whether or not  
11 he can determine if one party caused it, one party didn't.  
12 Now, I understand that these are ultimately mixed questions  
13 of, of law and fact, but we have the person who did the inves-  
14 tigation here. Mr. Hardman just asked on direct question  
15 about the complaints that were made. I'm simply asking Mr.  
16 Walker, and I -- and I've had objections and I've never been  
17 able to, to get him to, to say whether or not he determined  
18 was this intentional interference --

19 JUDGE CHACHKIN: And I'm --

20 MR. JOYCE: -- to the best of his ability.

21 JUDGE CHACHKIN: And I'm telling you I'm not going  
22 to permit it. I'm -- his opinion of whether it's intentional  
23 or not intentional is irrelevant. He could testify what he  
24 observed, what he did, and what -- that's what he could testi-  
25 fy about, the facts. He's not -- the question of whether it

1 was an unintentional or willful or deliberate is something  
2 that will be opened that we'll decide basis -- based on the  
3 evidence that's adduced.

4 MR. JOYCE: Which is what I'm attempting to do, Your  
5 Honor.

6 JUDGE CHACHKIN: Oh, no. No. You want him to make  
7 that determination. That's what the issues call for, an  
8 ultimate determination. It's not going to be based on whether  
9 he considers it to be willful or not. It's going to be based  
10 on all the evidence that comes in on the record here, all the  
11 facts. That's the -- I'm, I'm -- that determination will be  
12 based on all the facts that come in on the record. His opin-  
13 ion whether it's willful or not is irrelevant.

14 You could ask him all you want about what he ob-  
15 served, what he saw, what he did, and then, based on all the  
16 facts, then we'll have to make a determination whether it was  
17 willful or not.

18 BY MR. JOYCE:

19 Q Mr. Walker, my final question, I, I think, on this  
20 whole topic. This issue of interconnection, was it an issue  
21 at all in -- that's not a terribly good way of putting this.  
22 I'm, I'm -- to put it in technical terms, when you conducted  
23 your investigation and you made your findings about interfer-  
24 ence, was interconnection relevant to those findings?

25 A No, sir, it was not.

1 MR. JOYCE: I have no further questions.

2 JUDGE CHACHKIN: Ms. Foelak?

3 CROSS-EXAMINATION

4 BY MS. FOELAK:

5 Q I'd like to just ask a couple of questions about the  
6 paging terminal. The paging terminals in use by these  
7 licensees, did they have store and forward --

8 MR. HARDMAN: I object, Your Honor. There was  
9 nothing about paging terminals in, in my direct and there was  
10 nothing suggested in any of these documents about that.

11 JUDGE CHACHKIN: Is there anything in these docu-  
12 ments relating to paging terminals?

13 MS. FOELAK: Mr. Hardman's line of questioning  
14 seemed to focus on interconnection. The store and forward  
15 operation, as opposed to direct operation from the customer  
16 dialing in what he wants and then going a lot over the air,  
17 that's relevant to interconnection. That's -- that was the  
18 reason for my asking the question.

19 JUDGE CHACHKIN: I'll overrule the objection.

20 MR. WALKER: Okay. Can you repeat the question,  
21 please?

22 BY MS. FOELAK:

23 Q Did the paging terminals in use by these licensees  
24 have store and forward operation?

25 A I'm not sure I understand it.



1           Q     Was it your understanding that when a customer would  
2 dial in a paging request or order that that would immediately  
3 go out over the air from the customer's dialing or would it go  
4 into the paging terminal and -- the -- be sent out when the  
5 terminal decided the right time had come.

6           A     My understanding is that that request would be  
7 processed through the paging terminal. If the transmitters  
8 were available, it would be transmitted at that time. If not,  
9 it would be stored, stored until such time transmitters were  
10 available.

11          Q     Thank you. That's all I have.

12               JUDGE CHACHKIN: Do you have anything further on  
13 redirect?

14               MR. HARDMAN: No redirect, Your Honor.

15               JUDGE CHACHKIN: You're excused. Thank you very  
16 much. Do you have your next witness, Ms. Foelak?

17               MR. JOYCE: It -- Your Honor, before the next  
18 witness is called, and with all due respect to Your Honor's  
19 ruling yesterday about the, the order of witnesses and  
20 examination, I've taken a look at Part 1 of the rules and, and  
21 I'm hoping to come up with a resolution in the, the public's  
22 interest and in the, the interests of speeding up these pro-  
23 ceedings. I propose a motion under 1.255 that RAM  
24 Technologies adopt the FCC's witnesses for purposes of exami-  
25 nation, if there's no objection from, from Capitol, so that if

1 I happen to have any questions, as opposed to doing it as  
2 cross-examination, which I believe would raise an improper  
3 inference that, that the witnesses are hostile, and indeed  
4 they're not --

5 JUDGE CHACHKIN: -- was any inference that the  
6 witnesses are hostile. I mean, that would give you two  
7 cracks. That's totally unfair. You would have --

8 MR. JOYCE: No, I wouldn't --

9 JUDGE CHACHKIN: -- direct and redirect then.  
10 That's totally unfair. You would have redirect and redirect  
11 when it's not your witnesses. I'm permitting you to ask  
12 questions, treating you as any other -- as a Party to this  
13 proceeding, but certainly, since they're not your witnesses,  
14 you're not going to have an opportunity to ask direct ques-  
15 tions and redirect.

16 MR. JOYCE: I don't -- if, if I move to adopt the  
17 witnesses, there's always --

18 JUDGE CHACHKIN: You can't move to adopt the wit-  
19 ness. You had an opportunity, if you wanted, to put them in  
20 the direct case. You didn't. You haven't put in a single  
21 witness. You can't suddenly adopt witnesses. The order has  
22 been set. The Bureau has put in the direct case and Capitol  
23 has put in the direct case. You have not. You have a right  
24 as a Party to examine the witnesses. I am extending you that  
25 right. But it certainly doesn't give you the right to make

1 | them your witnesses and go have direct and redirect. They're  
2 | Ms. Foelak's witnesses. This is a revocation proceeding.

3 | MR. JOYCE: That's clear.

4 | JUDGE CHACHKIN: And that's the way we're going to  
5 | proceed. Ms. Foelak will ask her questions with her witness-  
6 | es. You will go next. Then Mr. Hardman will go next, and  
7 | then the Bureau will have redirect. And if Ms., if Ms. Foelak  
8 | doesn't raise any new matters, that will be the end of it.

9 | MR. JOYCE: As you wish, Your Honor.

10 | JUDGE CHACHKIN: That's the only way to do it.  
11 | Well, let's proceed, Ms. Foelak.

12 | MS. FOELAK: I call as my next witness Mr. Donald  
13 | Bogert.

14 | JUDGE CHACHKIN: Would you raise your right hand,  
15 | please? Please be seated. State your name and address for  
16 | the record, please.

17 | MR. BOGERT: My name is Donald W. Bogert and I  
18 | reside at 237 Antietam Road, Baltimore, Maryland, 21221.  
19 | Whereupon,

20 | DONALD W. BOGERT  
21 | having first been duly sworn, was called as a witness herein  
22 | and was examined and testified as follows:

23 | DIRECT EXAMINATION

24 | BY MS. FOELAK:

25 | Q Mr. Bogert, could you state what your employment is?

1           A     Yeah. I'm a Field Engineer at the Baltimore FCC  
2 District Office.

3           Q     And how long have you been an engineer with the FCC?

4           A     Since 1969.

5           Q     And what is your education?

6           A     I have a BS degree in electrical engineering.

7           Q     Could you describe the nature of your duties?

8           A     Yeah. We enforce the Communications Act and the FCC  
9 rules and regulations made from that Act and resolve  
10 interference complaints, track down illegal transmissions and,  
11 and look into marketing of illegal devices. And, I guess,  
12 basically any type of radio transmissions, we get involved  
13 with.

14          Q     Turning your attention to August of 1991, the August  
15 12th to 15 time period, can you describe what you did to  
16 monitor, monitor the 152.480 frequency in Charleston?

17          A     Yeah. Mr. Walker and myself were in separate  
18 vehicles during that week, among other things, looking into  
19 the allegations made by both Parties to see exactly what was  
20 going on. I positioned my vehicle close to the Capitol paging  
21 transmitter for the observations that we made on Monday and  
22 Tuesday. And Mr. Walker and I worked in concert to verify  
23 that the source of what we were listening to actually was  
24 coming from the proper transmitter so there wouldn't be any  
25 mistakes as to who was transmitting, you know, which

1 information.

2 Q So, from your location you could hear Capitol's  
3 transmissions clearly?

4 A Yeah. I could hear Capitol's transmissions much  
5 more strongly than RAM's since I was basically right by  
6 Capitol's antenna tower. And Jim and I conversed by radio  
7 when we had transmissions to verify that when Capitol was up  
8 it was a chance that maybe I wouldn't hear RAM come on. So,  
9 when, when we had situations, we coordinated it to be sure  
10 that when Capitol was on and RAM came up over the top of them  
11 Jim could best verify that that in fact was what happened.  
12 So, we made some notes during our observations on those two  
13 days. And, then, based on the familiarity we got with the  
14 transmitters or locations. We could make observations, as we  
15 did other things, from the vehicles by using our direction  
16 finder, the frequency of the two stations, and a -- the iden-  
17 tification, Morse Code ID, to make sure that we could -- you  
18 know, were still getting good data as to who was doing what.  
19 So, we gathered information Monday, Tuesday, and portions of,  
20 you know, the evenings, which we didn't write down but basic-  
21 ally observed the same general operation going on.

22 Q Can you describe the nature of Capitol's transmis-  
23 sions during that time?

24 A Yes. Capitol was transmitting a series of paging  
25 sequences, and from our observations, and in the car it ap-

1 | peared when, when RAM did not come up that Capitol transmitted  
2 | the sequence of pages approximately once a minute. When  
3 | Capitol couldn't come on because RAM was up, then, of course,  
4 | their pages backed up. So, when RAM went down, Capitol came  
5 | out and sent those sequences several times.

6 | MR. HARDMAN: Your Honor --

7 | MS. FOELAK: You had the term --

8 | JUDGE CHACHKIN: Yes?

9 | MR. HARDMAN: We, we had a lot of testimony about  
10 | this yesterday from Mr. Walker and, you know -- under the  
11 | cumulative evidence rule --

12 | JUDGE CHACHKIN: Overruled. We'll have this wit-  
13 | ness's testimony too. Overruled. Continue.

14 | BY MS. FOELAK:

15 | Q You used the term sequences. Were these messages or  
16 | what, what kind of a sound was it or --

17 | A It was simply paging. I mean, there were no  
18 | messages or anything. And after awhile, because of the -- you  
19 | know, you listen to the sound of the pages. You can tell it  
20 | was the same numbers being paged sequentially each time. So,  
21 | it didn't take too long before we, you know, figured out that  
22 | the same three or four pagers were being paged over and over  
23 | and it wasn't pages to other units or any messages to go along  
24 | with them. And sometimes the Capitol transmitter stayed off  
25 | the air until RAM was finished, but sometimes it did not. You

1 know, RAM would up and Capitol would come up and send their  
2 pages anyway. And we noted that RAM came up also on top of  
3 Capitol at times.

4 Q So, did you observe Capitol causing interference to  
5 RAM when it was up from your position?

6 A Well, during those instances where RAM was in the  
7 middle of a series of pages and Capitol came up and the like-  
8 lihood that some of their pages maybe didn't get received by  
9 the people that they were intended to.

10 Q And what dates did you observe these types of  
11 transmissions and interference?

12 A Well, Monday, Tuesday, Wednesday, and even Thursday  
13 morning, up till we initiated the inspection at Capitol.

14 Q Monday was August 12th and --

15 A Right.

16 Q -- Tuesday --

17 A Correct.

18 Q -- and so on? Turning to your inspection, did I  
19 understand you to say that these transmissions were continuing  
20 as you approached?

21 A Yes. Basically the same series of pages and the  
22 same -- you know, approximately once a minute, except when it  
23 got backed up, then when they got on the air it extended  
24 longer. The pages from RAM seemed to be pages to the clients  
25 whereas the pages from Capitol we weren't -- you know, it

1 | seemed to be just testing over and over again. So, that was  
2 | going on Thursday morning as we initiated the inspection at  
3 | Capitol.

4 |       Q     And what happened when you got to Capitol's place of  
5 | business?

6 |       A     Once we got there and started to get into the  
7 | mechanics of things and, you know, talk with, you know, people  
8 | there, the paging ceased. And I went out in the vehicle to  
9 | make sure that there were no pages that we could observe from,  
10 | from our car, and they had in fact stopped. And I made a note  
11 | that there were times when RAM was not on the air where  
12 | Capitol -- I would have expected those test pages would have  
13 | been continuing. There was opportunity when RAM was not on  
14 | the air that, if the pages were still queued into the termi-  
15 | nal, they should have been going, but they in fact stopped  
16 | going over the air.

17 |       Q     So, at what -- what was going on when you went back  
18 | out to the car and listened again, as you just described?

19 |       A     I turned the receiver back on when I started the  
20 | vehicle up tuned to that frequency, and then the only paging  
21 | that I heard was from RAM and nothing coming from Capitol.

22 |       Q     During the inspection was there any discussion of  
23 | the Morse Code ID'er, the speed of the ID'er?

24 |       A     Yes. We -- I informed Mr. Walker myself, informed  
25 | Capitol that the speed of their Morse Code ID appeared much



1 slower than the rules required. And at one point I guess they  
2 actually had called someone who services or manufactures the  
3 equipment that makes the Morse Code ID go out. And in talking  
4 with that person, it was a little confusing, because the way  
5 the circuit boards slid in and out of the chassis. I was  
6 trying to see which way the dip switches were set, but we --  
7 at the time, I had thought that the switches, according to  
8 what I was told, were set for a fast Morse Code ID, but, in  
9 fact, if you listened to the station at all, it was clear that  
10 the speed was very slow. It's something that you, if you  
11 listened over the air, that you shouldn't be able to miss.  
12 But yet -- I mean, so it was a question at that point why the  
13 Morse Code was slow. I think about a year later we got a  
14 response from Capitol that the speed had been corrected. I  
15 think it was July of '92. I don't know why they didn't get  
16 corrected right away, but --

17 Q After this looking at the dip switches and the phone  
18 conversation, did you make any comment to Capitol's people --

19 A Just that --

20 Q -- about this?

21 A -- whatever the problem was that the speed was in  
22 violation of the FCC rules and needed to be corrected.

23 Q Turning your attention to your inspection of their  
24 transmitter sites, do you recall what kind of transmitters  
25 they had and their power?